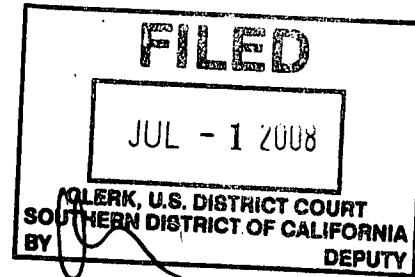


ORIGINAL

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United States of America  
7  
8



9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, ) Criminal Case No. 08CR2098JAH  
12 Plaintiff, )  
13 v. ) PLEA AGREEMENT  
14 RAFAEL SANTIAGO-VASQUEZ (2), ) (Pre-Indictment Fast-Track Program)  
15 Defendant. )  
16 )

17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF  
18 AMERICA, through its counsel, Karen P. Hewitt, United States Attorney,  
19 and W. Mark Conover, Assistant United States Attorney, and defendant,  
20 RAFAEL SANTIAGO-VASQUEZ, with the advice and consent of ~~Hanni~~ <sup>Steven</sup>  
21 ~~Falhoury~~, counsel for defendant, as follows:

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28 WMC:jam:6/11/08

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I

THE PLEA

A. The Charge. Defendant agrees to waive Indictment and plead guilty to a single-count Information charging defendant with:

On or about June 8, 2008, within the Southern District of California, defendant RAFAEL SANTIAGO-VASQUEZ, with the intent to violate the immigration laws of the United States, did bring or attempt to bring to the United States an alien, namely, Adolfo Talamantes-Rocha, knowing that said person was an alien, at a place other than a designated port of entry and at a place other than as designated by the Department of Homeland Security; in violation of Title 8, United States Code, Section 1324(a)(1)(A)(i) and (V)(II).

This plea agreement is part of a "package" disposition. In order for defendant to receive the benefit of this agreement, codefendant JOSE LUIS GOMEZ-HERNANDEZ also must plead guilty at the same time. See Section VI E. below.

B. Early Disposition (Fast-Track) Program. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Southern District of California.

C. Program Requirements. As part of this plea agreement, and as set forth in Section X.A.5. below, the United States will move the Court to depart downward two offense levels under USSG § 5K3.1 provided defendant complies with the following early disposition (Fast-Track) program requirements, to which defendant specifically agrees:

1. to waive indictment on or before the first preliminary hearing date;

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1           2.    to stipulate in writing on or before the first  
2 preliminary hearing date that:

3               a.    the material witnesses:

4                   (1)   are aliens with no lawful right to enter or  
5 remain in the United States;

6                   (2)   entered the United States illegally on or  
7 about a date certain;

8                   (3)   were found in rural terrain near the  
9 international border with Mexico and for whom defendant was the guide,  
10 and defendant knew they were aliens with no lawful right to enter or  
11 remain in the United States;

12                  (4)   were paying or having others pay on their  
13 behalf, to defendant or others to be brought into the United States  
14 illegally and/or transported illegally to their destination therein;  
15 and,

16                  (5)   may be released and remanded immediately to  
17 the Department of Homeland Security for return to their country of  
18 origin.

19               (b)   after the material witnesses are ordered released  
20 by the Court pursuant to this motion, if defendant does not plead  
21 guilty to the charge described above, for any reason, or thereafter  
22 withdraws his guilty plea to that charge, defendant agrees that in any  
23 proceeding, including, but not limited to, motion hearings, trial,  
24 sentencing, appeal or collateral attack, that:

25                   (1)   the stipulated facts set forth in paragraph  
26 c.(2)(a)(1)-(5) above shall be admitted as substantive evidence;

27                   (2)   the United States may elicit hearsay  
28 testimony from arresting agents regarding any statements made by the

1 material witness(es) provided in discovery, and such testimony shall  
2 be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as  
3 statements against interest of (an) unavailable witness(es); and,  
4 (3) understanding that under Crawford v.  
5 Washington, 124 S. Ct. 1354 (2004), "testimonial" hearsay statements  
6 are not admissible against a defendant unless defendant confronted and  
7 cross-examined the witness(es) who made the "testimonial" hearsay  
8 statements, defendant waives the right to confront and cross-examine  
9 the material witness(es) in this case.

10 3. to execute and file a Waiver of Indictment and a  
11 Stipulation of Fact and Joint Motion for Release of Material  
12 Witness(es) at the first preliminary hearing date;

13 4. to file or argue no substantive motions, including  
14 those described in Fed. R. Crim. P. 12;

15 5. to plead guilty to the charge within 30 days of  
16 arraignment on the complaint initially filed against defendant;

17 6. to waive the right to appeal or collaterally attack the  
18 plea, conviction, or sentence; and,

19 7. if defendant is illegally in the United States, to  
20 stipulate and agree to an order of removal from the United States  
21 entered by Executive Office for Immigration Review or authorized  
22 Department of Homeland Security official, and unconditionally waives  
23 all rights to appeal, reopen, or collaterally attack the order of  
24 removal (see Section XI [Defendant Waives Appeal and Collateral  
25 Attack] below).

26 D. Timeliness/Offer Revocation. The disposition contemplated  
27 by this agreement is conditioned on (1) the original plea agreement  
28 being signed by defendant and defense counsel and returned to

Def. Initials R.S.V  
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1 Government counsel not later than five business days before the  
2 disposition date, and (2) the guilty plea being entered on or before  
3 July 10, 2008. Therefore, in the event that defendant seeks a delay  
4 in the disposition in this case to a date beyond 30 days of  
5 arraignment, or otherwise fails to comply with these timeliness  
6 requirements, the United States may in its sole discretion revoke the  
7 disposition offer contained in this plea agreement and seek  
8 defendant's indictment on the underlying charge(s).

9 E. No Prosecution on Mandatory Minimum Count. In exchange for  
10 defendant's guilty plea and sentencing on the single-count Information  
11 and provided defendant complies fully with all terms of this plea  
12 agreement, the Government agrees not to charge him/her with violating  
13 8 U.S.C. § 1324(a)(2)(B)(ii), which, under the facts of this case,  
14 carries a five-year mandatory minimum sentence.

15 F. Forfeiture. The defendant further agrees to the  
16 administrative and/or civil forfeiture of all properties seized in  
17 connection with this case which the defendant agrees are subject to  
18 forfeiture to the United States pursuant to Title 8, United States  
19 Code, Section 1324(b). The defendant further waives his right to  
20 receive timely notice of administrative forfeiture as set forth in 18  
21 U.S.C. § 983(a) and waives receipt of all notice of forfeiture in this  
22 and all other administrative and civil proceedings. Defendant  
23 warrants and represents as a material fact that all property in which  
24 he has any interest may be forfeited as described above.

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II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. Defendant brought a person who was an alien into the United States at a place other than a designated port of entry or at a place other than as designated by a United States immigration official;
2. Defendant knew that the person was an alien; and,
3. Defendant acted with the intent to violate the United States immigration laws by assisting that person to enter the United States at a time or place other than as designated by a United States immigration official or to otherwise elude United States immigration officials.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

1. On June 8, 2008, defendant guided 15 aliens including Adolfo Talamantes-Rocha into the United States from Mexico in Echo Canyon, near the Campo, California Port of Entry.
2. Defendant knew that Adolfo Talamantes-Rocha was an alien.
3. The material witness was paying \$1,500 to others to be brought into the United States illegally and transported illegally to his destination therein.
4. Defendant acted with the intent to violate the United States immigration laws by assisting Adolfo Talamantes-Rocha to enter the United States at a time or place other than as designated by a United States immigration official or to otherwise elude United States immigration officials.

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1 III

2 PENALTIES

3 Defendant understands that the crime to which defendant is  
4 pleading guilty carries the following penalties:

- 5 A. a maximum 10 years in prison;  
6 B. a maximum \$250,000 fine;  
7 C. a mandatory special assessment of \$100.00 per count; and  
8 D. a term of supervised release of 3 years. Defendant  
9 understands that failure to comply with any of the  
10 conditions of supervised release may result in revocation  
11 of supervised release, requiring Defendant to serve in  
12 prison all or part of the term of supervised release.

11 IV

12 DEFENDANT'S WAIVER OF TRIAL RIGHTS

13 Defendant understands that this guilty plea waives the right to:

- 14 A. continue to plead not guilty and require the Government to  
15 prove the elements of the crime beyond a reasonable doubt;  
16 B. a speedy and public trial by jury;  
17 C. the assistance of counsel at all stages of trial;  
18 D. confront and cross-examine adverse witnesses;  
19 E. present evidence and to have witnesses testify on behalf of  
20 defendant; and,  
21 F. not testify or have any adverse inferences drawn from the  
22 failure to testify.

23 V

24 DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE  
25 PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

26 The Government represents that any information establishing the  
27 factual innocence of defendant known to the undersigned prosecutor in  
28 this case has been turned over to defendant. The Government will  
continue to provide such information establishing the factual  
innocence of defendant.

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1 Defendant understands that if this case proceeded to trial, the  
 2 Government would be required to provide impeachment information  
 3 relating to any informants or other witnesses. In addition, if  
 4 defendant raised an affirmative defense, the Government would be  
 5 required to provide information in its possession that supports such  
 6 a defense. Defendant acknowledges, however, that by pleading guilty  
 7 defendant will not be provided this information, if any, and  
 8 Defendant also waives the right to this information. Finally,  
 9 defendant agrees not to attempt to withdraw the guilty plea or to file  
 10 a collateral attack based on the existence of this information.

11 VI

12 **DEFENDANT'S REPRESENTATION THAT GUILTY**  
 13 **PLEA IS KNOWING AND VOLUNTARY**

14 Defendant represents that:

- 15 A. Defendant has had a full opportunity to discuss all the  
 16 facts and circumstances of this case with defense counsel,  
 17 and has a clear understanding of the charges and the  
 18 consequences of this plea;
- 19 B. No one has made any promises or offered any rewards in  
 20 return for this guilty plea, other than those contained in  
 21 this agreement or otherwise disclosed to the court;
- 22 C. No one has threatened defendant or defendant's family to  
 23 induce this guilty plea; and,
- 24 D. Defendant is pleading guilty because in truth and in fact  
 25 defendant is guilty and for no other reason.
- 26 E. "Package" Disposition. Further, defendant expressly  
 27 acknowledges his understanding that the disposition  
 28 contemplated by this agreement is part of a "package"  
 disposition with his codefendant JOSE LUIS GOMEZ-HERNANDEZ,  
 wherein the Government's obligations under the agreement  
 are conditioned on the performance by defendant and his  
 codefendant of their obligations under the agreement.

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## VII

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF CALIFORNIA**

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by the defendant.

## VIII

**APPLICABILITY OF SENTENCING GUIDELINES**

Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory, and the court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. Defendant understands further that the sentence cannot be determined until a presentence report has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be construed as limiting the Government's duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

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## IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

## X

PARTIES' SENTENCING RECOMMENDATIONSA. SENTENCING GUIDELINE CALCULATIONS

Although the parties understand that the Guidelines are only advisory and just one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures (if applicable):

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1. Base Offense Level [USSG § 2L1.1(a)(3)] 12
2. Number of Aliens [USSG § 2L1.1(b)(2)] +3
3. Prior Immigration Felony [USSG § 2L1.1(b)(3)] 0\*
4. Acceptance of Responsibility [USSG § 3E1.1] ~~2~~ <sup>can</sup>
5. Departure for Fast Track [USSG § 5K3.1] ~~2~~ <sup>R.S.V.</sup>
- Total Offense Level 10 11 <sup>23</sup>

\*There is no agreement regarding defendant's criminal history category. However, if defendant has previously sustained a conviction for a felony immigration and naturalization offense, the parties will recommend a +2 adjustment, pursuant to USSG 2L1.1(b)(3)(A). If defendant has previously sustained two or more such felony immigration convictions, the parties will recommend a +4 adjustment, pursuant to USSG 2L1.1(b)(3)(B).

B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A.4 above, the Government will not recommend any adjustment for Acceptance of Responsibility if defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or
2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or probation officer, or
3. Fails to appear in court, or
4. Engages in additional criminal conduct, or
5. Attempts to withdraw the plea, or
6. Refuses to abide by any lawful court order.
7. Contests or assists any third party in contesting the forfeiture of property(ies) seized or forfeited in connection with this case.

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1 C. ADJUSTMENTS AND SENTENCE REDUCTIONS UNDER 18 U.S.C. § 3553

2 The parties agree not to recommend any upward or downward  
3 adjustments other than those listed above, or other sentence  
4 reductions under 18 U.S.C. § 3553.

5 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

6 The parties have no agreement as to defendant's Criminal History  
7 Category.

8 E. DEPARTURES AND SENTENCE REDUCTIONS UNDER 18 U.S.C. § 3553

9 The parties agree not to recommend any upward or downward  
10 departures, including any criminal history departures under USSG  
11 § 4A1.3, or other sentence reductions under 18 U.S.C. § 3553.

12 F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

13 The parties agree that the facts in the "factual basis" paragraph  
14 of this agreement are true, and may be considered as "relevant  
15 conduct" under USSG § 1B1.3 and as the nature and circumstances of the  
16 offense under 18 U.S.C. § 3553(a)(1).

17 G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

18 The parties agree that the Government will recommend that  
19 defendant be sentenced to the low end of the advisory guideline range  
20 as calculated by the Government pursuant to this agreement. However,  
21 if the Court adopts an offense level or downward adjustment or  
22 departure below the Government's recommendations in this plea  
23 agreement, the Government will recommend a sentence as near as  
24 possible to what the sentence would have been if the Government's  
25 recommendations had been followed.

26 H. SPECIAL ASSESSMENT

27 The parties will jointly recommend that defendant pay a special  
28 assessment in the amount of \$100.00 to be paid forthwith at time of

1 sentencing. The special assessment shall be paid through the office  
2 of the Clerk of the District Court by bank or cashier's check or money  
3 order made payable to the "Clerk, United States District Court."

4 I. STIPULATED REMOVAL

5 If defendant is not a United States citizen or national, either  
6 before or immediately following sentencing, defendant agrees to an  
7 order of removal from the United States entered by Executive Office  
8 for Immigration Review or authorized Department of Homeland Security  
9 official. Defendant understands that defendant will not be removed  
10 until defendant has served any criminal sentence imposed in this or  
11 any other case. Defendant further waives any right to appeal, reopen  
12 or challenge the removal order.

13 XI

14 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

15 In exchange for the Government's concessions in this plea  
16 agreement, defendant waives, to the full extent of the law, any right  
17 to appeal or to collaterally attack the conviction and sentence,  
18 including any restitution order, unless the Court imposes a custodial  
19 sentence above the greater of the high end of the guideline range  
20 recommended by the Government pursuant to this agreement at the time  
21 of sentencing or statutory mandatory minimum term, if applicable. If  
22 the custodial sentence is greater than the high end of that range, the  
23 defendant may appeal, but the Government will be free to support on  
24 appeal the sentence actually imposed. If defendant believes the  
25 Government's recommendation is not in accord with this agreement,  
26 defendant will object at the time of sentencing; otherwise the  
27 objection will be deemed waived.

28

1 If defendant breaches this plea agreement, at any time, by  
 2 appealing or collaterally attacking the conviction or sentence, in any  
 3 way, the Government may prosecute defendant for any counts, including  
 4 those with mandatory minimum sentences, dismissed or not charged  
 5 pursuant to this plea agreement. Additionally, the Government may use  
 6 any factual admissions made by defendant pursuant to this plea  
 7 agreement in any such prosecution.

## 8 XII

### 9 CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT 10 THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE 11 THE PLEA

12 This plea agreement is based on the understanding that, prior to  
 13 defendant's sentencing in this case, defendant has not committed or  
 14 been arrested for any offense not known to the Government prior to  
 15 defendant's sentencing. This plea agreement is further based on the  
 16 understanding that defendant has committed no criminal conduct since  
 17 defendant's arrest on the present charges, and that defendant will  
 18 commit no additional criminal conduct before sentencing. If defendant  
 19 has engaged in or engages in additional criminal conduct during this  
 20 period, or breaches any of the terms of any agreement with the  
 21 Government, the Government will not be bound by the recommendations  
 22 in this plea agreement, and may recommend any lawful sentence. In  
 23 addition, at its option, the Government may move to set aside the  
 24 plea.

## 25 XIII

### 26 ENTIRE AGREEMENT

27 This plea agreement embodies the entire agreement between the  
 28 parties and supersedes any other agreement, written or oral.

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XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

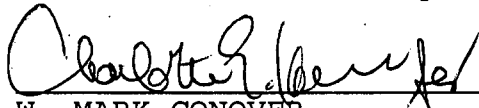
By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL


Defendant has consulted with counsel and is satisfied with counsel's representation.

KAREN P. HEWITT  
United States Attorney

  
W. MARK CONOVER  
Assistant U.S. Attorney


6/26/08  
DATED

6/18/08  
DATED

  
~~HANNI FAKHOURY~~ KAREN M. STEVENS  
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

6/18/08  
DATED

  
X  
RAFAEL SANTIAGO-VASQUEZ  
Defendant